

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. AT&T COMMUNICATIONS OF THE MIDWEST, INC., Respondent.	DOCKET NO. FCU-03-37
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**ORDER DOCKETING FOR FORMAL PROCEEDING,
DENYING REQUEST TO DISMISS COMPLAINT,
AND REQUESTING STATUS REPORT**

(Issued January 20, 2004)

On May 27, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to impose civil penalties pursuant to Iowa Code § 476.103 (2003), asking that the Board review the proposed resolution issued in C-03-95, involving AT&T Communications of the Midwest, Inc. (AT&T), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings (which is a part of the record in this proceeding pursuant to 199 IAC 6.7), it appears the events to date can be summarized as follows:

On May 6, 2003, Mr. Martin Herold submitted a complaint to the Board alleging that he was induced to switch his long distance telephone service to AT&T by a telemarketer who represented that Mr. Herold would receive a rate of \$.07 per minute for long distance calls. Mr. Herold alleged that based on this offer, he switched his long distance service to AT&T, but AT&T did not make good on the offer. Board staff identified the matter as C-03-95, and, pursuant to Board rules, on May 7, 2003, forwarded the complaint to AT&T for response.

AT&T responded on May 19, 2003, stating that a credit was issued to Mr. Herold's account for the appropriate charges in the amount of \$24.01, including taxes. AT&T further stated that it intended to take appropriate action in the matter.

On May 19, 2003, Board staff issued a proposed resolution stating that AT&T's response did not include information regarding the third-party verification recording and proof that a written notice of the service change was provided to the customer. The proposed resolution provided that because AT&T did not provide this proof, AT&T must credit to Mr. Herold's account the switching fees associated with the change of long distance carriers in addition to the appropriate charges of \$24.01, including taxes, and close Mr. Herold's account with AT&T.

In its May 27, 2003, petition, Consumer Advocate asserts that a civil penalty should be imposed against AT&T to deter future slamming violations.

On June 13, 2003, Board staff received a response from AT&T to Consumer Advocate's petition. In that response, AT&T stated that the third-party verification

recording, which was attached to AT&T's response, clearly indicated that Mr. Herold knew he was purchasing long distance service from AT&T. In addition, AT&T stated that a sample of the "Welcome Packet" sent to Mr. Herold, also attached to AT&T's response, clearly stated that as part of the "AT&T One Rate 7¢ No Monthly Fee Plan," each long distance call is subject to a \$.35 service charge. AT&T also stated that as an accommodation to Mr. Herold, AT&T credited Mr. Herold's bill for all long distance charges through March 29, 2003, in the amount of \$63.10, and issued Mr. Herold a check in the amount of \$20 as reimbursement for all switching fees. AT&T asserted that since it provided Board staff with the requested information and fully credited Mr. Herold's account, this matter should be dismissed.

On June 23, 2003, Consumer Advocate filed a reply to AT&T's response maintaining that the telemarketing tactics used by AT&T were deceptive and vitiate any authorization that Mr. Herold may have given for the change of service. Without the proper authorization, Consumer Advocate asserts that AT&T was in violation of Iowa Code § 476.103.

The Board has reviewed the record to date as well as the additional slamming complaints made against AT&T and finds that there is sufficient information to warrant further investigation in this matter. The Board recognizes that there has not been any action in this matter for some time. Therefore, the Board will delay establishing a procedural schedule until February 9, 2004, and will request that the

parties submit a report to the Board regarding the status of this matter on or before that date.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Impose Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on May 27, 2003, identified as Docket No. FCU-03-37, is granted and docketed for formal proceeding.
2. The request to dismiss the petition filed by AT&T Communications of the Midwest, Inc., on June 13, 2003, is denied.
3. The parties shall submit a status report to the Board on or before February 9, 2004, as described in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 20th day of January, 2004.